

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

PHILIP JORDAN,

Petitioner,

CASE NO. 2:09-cv-00612

JUDGE HOLSCHUH

MAGISTRATE JUDGE ABEL

v.

TIMOTHY BRUNSMAN, Warden,

Respondent.

OPINION AND ORDER

On August 12, 2009, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed as barred by the one-year statute of limitations under 28 U.S.C. 2244(d). Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of this case as untimely. Petitioner contends that the statute of limitations did not begin to run until May 6, 2009, the date that the Ohio Supreme Court dismissed his appeal of the appellate court's denial of his motion to reconsider the January 17, 2008 denial of his application to reopen the appeal pursuant to Ohio Appellate Rule 26(B).¹ *See Objections*. However, the

¹ As detailed in the Magistrate Judge's *Report and Recommendation*, according to the petition, the Ohio Tenth District Court of Appeals affirmed petitioner's convictions and sentence on November 28, 2006. He did not file an appeal to the Ohio Supreme

statute of limitations expired on February 19, 2008, long before petitioner filed his October 14, 2008, motion for reconsideration. Therefore his motion for reconsideration did not affect the running of the statute of limitations in this case. "The tolling provision does not ... 'revive' the limitations period (i.e., restart the clock at zero); it can only serve to pause a clock that has not yet fully run ." *Vroman v. Brigano*, 346 F.3d 598, 601 (6th Cir. 2003), citing *Rashid v. Khulmann*, 991 F.Supp. 254, 259 (S.D.N.Y. 1998); *Winkfield v. Bagley*, 66 Fed.Appx. 578, unpublished, 2003 WL 21259699 (6th Cir. May 28, 2003)(same).

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. For the above reasons, and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

Date: December 7, 2009

/s/ John D. Holschuh
JOHN D. HOLSCHUH
United States District Judge

Court. On November 7, 2007, petitioner filed a Rule 26(B) application, which the appellate court denied on January 17, 2008. Petitioner did not appeal to the Ohio Supreme Court. On October 14, 2008, he filed a motion for reconsideration. On January 13, 2009, the appellate court denied his motion, and on May 6, 2009, the Ohio Supreme Court dismissed his subsequent appeal.